Frequently Asked Questions

SECTION 1: NATIONAL INDIAN GAMING COMMISSION

Q1. What is the Commission's role in regulating Indian gaming?
A1. The regulatory scheme for Indian gaming is more complex than a casual reading of the statute might suggest. Although Congress clearly intended regulatory issues to be addressed in Tribal-State compacts, it left a number of key functions in federal hands, including approval authority over compacts, management contracts, and tribal gaming ordinances. Congress also vested the National Indian Gaming Commission (NIGC or Commission) with broad authority to issue regulations in furtherance of the purposes of the Indian Gaming Regulatory Act (IGRA).

Q2. How is the Commission funded?
A2. The Commission is solely funded through fees collected from gaming operations under its jurisdiction. The agency bases fees on a percentage of net revenue of Class II and Class III operations; for example, in 2004, the fee rate was .063% for operations earning more than $1.5 million. Generally speaking, this means that for each $1,000 of net gaming revenue a gaming facility generates, a tribe must pay the Commission $0.63. Operations generating less than $1.5 million are not subject to fees.

Q3. How can the Commission regulate a multi-billion dollar industry on a limited budget?
A3. Although the budget of the Commission has not grown proportionately to the growth of the Indian gaming industry, it is important to note that tribal gaming commissions are the primary regulators of gaming operations. The role of the Commission is to monitor and validate the work of tribal gaming regulators. Further, depending on individual Tribal-State compacts, some states may also play a regulatory role in Indian gaming operations.

Q4. Where is state-specific information on casino profits located?
A4. The NIGC does not make tribal-specific or state-specific confidential financial information available to the public.

Q5. Does the Commission approve the opening of every Indian casino?
A5. In general, the Commission does not specifically approve the opening of every Indian casino or gaming facility. However, before a tribe may operate a gaming facility, the NIGC must have reviewed and approved a tribe's gaming ordinance. A tribe must also license every gaming facility. In addition, the land upon which the gaming operation will be located must be Indian land for gaming purposes. If a tribe wishes to have management by a third party, the Commission must review and approve the management contract.

Q6. Why doesn't a casino have to comply with local and state zoning?
A6. Although states and local governments generally have the right to regulate persons and activities within their borders, and Indian reservations are contained within such borders, the United States Constitution gives Congress the exclusive authority over Indian affairs. Unless Congress specifically authorizes a state to apply its laws within an Indian reservation, it may not do so. However, in IGRA, Congress declared that the construction and maintenance of tribal gaming facilities must adequately protect the environment and the health and safety of tribal casino employees and patrons. The Commission ensures that these provisions of the IGRA are implemented.

SECTION 2: INDIAN GAMING

Q1. Under what authority are tribes permitted to conduct gaming in states?
A1. In 1987, the Supreme Court in *California v Cabazon Band of Mission Indians* confirmed the authority of tribal governments to establish gaming operations independent of state regulation. The following year, Congress passed the Indian Gaming Regulatory Act (IGRA), which provided a regulatory framework for Indian gaming. IGRA offered states a voice in determining the scope and extent of tribal gaming by providing that the state in question must permit some form of the gaming and by requiring Tribal-State compacts for Class III gaming (casino gaming). Tribal regulatory authority over Class II gaming (bingo, pulltabs, and certain card games) was left to the tribes. IGRA further provided for general regulatory oversight at the federal level and created the National Indian Gaming Commission (Commission or NIGC).

Q2. In which states does Indian gaming occur?
A2. Indian gaming occurs in the following 28 states

ALABAMA	LOUISIANA	NORTH DAKOTA
ALASKA	MICHIGAN	OREGON
ARIZONA	MINNESOTA	OKLAHOMA
CALIFORNIA	MISSISSIPPI	SOUTH DAKOTA
COLORADO	MONTANA	TEXAS
CONNECTICUT	NEBRASKA	WASHINGTON
FLORIDA	NEVADA	WISCONSIN
IDAHO	NEW MEXICO	WYOMING
IOWA	NEW YORK	
KANSAS	NORTH CAROLINA	

Q3. Who regulates Indian gaming?
A3. Indian tribes are the primary regulators of Class II gaming. Regulation of Class III gaming may be addressed in the Tribal-State compacts and varies by state with the tribes remaining the primary regulator in most states. Both Class II and Class III gaming are subject to the provisions of the IGRA and oversight by the NIGC.

Q4. What process must a tribe follow to operate a gaming facility?

1. The tribe must determine whether the state in which the gaming facility is to be located permits such gaming. If the state permits gaming by any person, organization or entity, then tribes are allowed to conduct Class II gaming activities without state approval. If the tribe wishes to conduct Class III gaming, a Tribal-State compact must be negotiated.

2. Indian gaming must be conducted on Indian lands within a tribes' jurisdiction. Indian lands are defined as all lands within the limits of any Indian reservation and any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises government power.

3. The tribe must submit a tribal gaming ordinance to the Commission. The ordinance must provide, among other things, that: (1) the tribe will have the sole proprietary interest and responsibility for conducting gaming, (2) net revenues will be used for specific purposes, (3) annual outside audits will be conducted, and (4) a process for licensing and conducting background checks is in place. The Chairman of the NIGC must approve an ordinance before gaming can occur.

Q5. Does gaming have to take place on either reservations or land held in trust?
A5. The IGRA requires that Indian gaming occur on Indian lands. Indian lands include land within the boundaries of a reservation as well as land held in trust or restricted status by the United States on behalf of a tribe or individual, over which a tribe has jurisdiction and exercises governmental power. Tribes operating gaming facilities off the reservation on non-Indian lands are subject to the laws of the state where the facility is located.

Q6. When should a tribe seek an Indian lands determination from the NIGC?
A6. Indian gaming must occur on "Indian lands," as defined by IGRA. Indian lands include land within the boundaries of a reservation as well as land held in trust or restricted status by the United States on behalf of a tribe or an individual Indian, over which a tribe has jurisdiction and exercises governmental power. IGRA generally prohibits Indian gaming on lands acquired after October 17, 1988. However, there are certain exceptions to this prohibition. *See* 25 U.S.C. § 2719. If a tribe is uncertain as to whether the land on which they intend to game qualifies as "Indian lands," it should seek an advisory opinion from the NIGC prior to initiating gaming. Furthermore, tribes should notify the NIGC whenever they plans to open a new facility so that the NIGC may assure that the operation will be located on Indian lands.

Q7. How do tribes apply to have lands taken into trust?
A7. Land into trust is a real estate transaction that converts land from private or individual (fee) title into federal title. Trust status can only be conferred by an Act of Congress, a court decision or settlement, or, most commonly, through an application through the U.S. Department of Interior.

Q8. What is a Tribal-State Compact?
A8. Tribal-State compacts are agreements that establish the rules to govern the conduct of Class III gaming activities. Although a compact is negotiated between a tribe and a state, the Secretary of the Interior must also approve the compact.

Q9. When must a tribe submit a gaming ordinance to NIGC for the Chairman's review and approval?
A9. Prior to engaging in Class II or Class III gaming, a tribe must submit a gaming ordinance or resolution adopted by its governing body to the NIGC for review and approval by the NIGC Chairman.

Q10. What happens to the profits from Indian gaming operations?
A10. The IGRA requires net revenues from any tribal gaming operation are to be used for the following purposes:

- fund tribal government operations or programs
- provide for the general welfare of the Indian tribe and its members
- promote tribal economic development
- donate to charitable organizations
- help fund operations of local government agencies.

If a tribe is able to adequately provide these services and wishes to distribute net revenue in the form of a per capita payment to members of the tribe, the tribe must have a Revenue Allocation Plan (RAP), which is approved by the Secretary of the Interior.

Q11. Do all tribes make payments to individual members?
A11. As of December 2001, only about one-third of the gaming tribes had approved Revenue Allocation Plans in place to distribute per capita payments to individual tribal members.

Q12. What is a Revenue Allocation Plan and when is it required for a tribe to have one?
A12. A revenue allocation plan (RAP) is a document prepared by a tribe that describes how the tribe will allocate net gaming revenues. RAPs are required to be submitted to the U.S. Department of the Interior for the Secretary's approval prior to a tribe making per capita payments to its tribal members from net gaming revenues.

Q13. How can a tribe operate a casino on land that is in another state?
A13. When Congress enacted the IGRA, it permitted the operation of tribal casinos within reservations and on land held in trust or restricted status by the United States for a tribe or individual Indian. Tribes may also operate casinos on land acquired after the enactment of the IGRA, subject to certain restrictions and exceptions as set forth in the IGRA and administered by the Secretary of the Interior. The IGRA does not require that a tribe operate a casino within the borders of the state in which the tribe is based.

Q14. What is the difference between Class II and Class III gaming?
A14. In the IGRA, Congress included the definition of Class II gaming as follows: bingo; when played in the same location as bingo - pull tabs, lotto, punch boards, tip jars, instant bingo, other games similar to bingo; and non-house banked card games authorized or not explicitly prohibited by the state in which the tribal operation is located. All other games are Class III, except for certain social or traditional forms of gaming. Class III games include, but are not limited to the following: baccarat, chemin de fer, blackjack, slot machines, and electronic or electromechanical facsimiles of any game of chance. The NIGC Office of General Counsel reviews games on request by a tribe or a game developer and issues advisory opinions on whether they are Class II or Class III.

Q15. When must a tribe submit a management contract to the NIGC Chairman for his approval?
A15. Upon the execution of a management contract, a tribe or management contractor shall submit the contract to the Chairman for review and approval. No action should be taken under a management contract until it has been approved. Moreover, management contracts that have not been approved are void.

Beyond management contracts, should other gaming-related contracts be submitted to the NIGC?
If a tribe or contractor is uncertain whether a gaming-related contract, such as a development, lease, or consulting agreement, requires the approval of the NIGC Chairman, they should submit the contract to the NIGC. The NIGC will review each submission and determine whether it requires the Chairman's approval. If it does, the NIGC will notify the tribe or contractor to formally submit the contract.

Q16. What is the sole proprietary interest mandate of IGRA?
A16. IGRA requires that a "Indian tribe will have the sole propriety interest and responsibility for the conduct of any gaming activity." Consequently, if any entity other than a tribe possesses a propriety interest, meaning an ownership interest, in the gaming activity, that interest would be a violation of IGRA.

Q17. Can Tribes submit electronic copies of financial statements, management letters, and AUP reports to be in compliance with 25 C.F.R. 571.13 and 542.3(f)?
A17. The NIGC has recently established a web address, financials_AUPfilings@nigc.gov, whereby filings can be made electronically in order to meet the filing deadline. However, a hard copy is still required to be sent to the main office in Washington, DC at NIGC, 90 K Street, N.E., Suite 200, Washington, DC 20002.

SECTION 3: TRIBAL ISSUES AND TRIBAL SOVEREIGNTY

Q1. What is tribal sovereignty?
A1. Tribal sovereignty refers to the rights of Indian tribes to self-government and self-determination. Among other things, this includes the right to establish the form of government, to adopt legislation, to establish a law enforcement and court system, and to define membership.

Q2. What is the historical basis of tribal sovereignty?
A2. Indian Nations were considered sovereign before the framing of the U.S. Constitution. European countries regularly dealt with Indians as nations as they entered into treaties for trade and alliance purposes. The U.S. Constitution, Article 1, Section 8, addresses Indian tribes as follows: "The Congress shall have the power to regulate commerce with foreign nations and among the several states and with Indian tribes." Indians are the only group of people specifically mentioned in the U.S. Constitution. The U.S. Supreme Court affirmed the sovereignty of tribes in a series of rulings. The most notable were three cases referred to as the Marshall Trilogy. The cases were Johnson v McIntosh (1823), *Cherokee Nation v Georgia* (1831), and *Worcester v Georgia* (1832). A recent case, *California v Cabazon Band of Mission Indians* (1987) deals directly with tribal gaming and confirms the right of tribes to conduct gaming activities.

Q3. What is a federally recognized Indian Tribe?
A3. Federal recognition means a group of Indians has been recognized as a tribe and the interactions between the tribe and the Federal Government are on a government-to-government basis. Inclusion on the list of federally recognized tribes entitles a tribe to special services and benefits. The Department of the Interior maintains this list. Federal recognition can be a result of historical continued existence, Executive Order, congressional legislation, or the Department of the Interior's federal acknowledgement process. Federal recognition is typically a requirement of being eligible for federal aid or funding. The Federal Government has broad powers in dealing with tribes; however, the powers are subject to constitutional restrictions.

Q4. Do Indian tribes pay taxes?
A4. Indian tribal businesses do pay a wide variety of taxes, including taxes on wagering, occupational taxes, and employment taxes. For federal income tax purposes, however, Indian tribes are governmental entities and, as such, are not required to pay taxes on the income generated by the Indian tribes, including income generated by commercial activities.

Q5. What is the role of the state government in Indian tribes?
A5. State governments have no control or authority over Indian tribes unless specifically authorized by Congress.

SECTION 4: TRIBAL MEMBERS

Q1. Who is considered a tribal member?
A1. Indian tribes have the authority to determine membership requirements. Many tribes have a blood quantum requirement (i.e., one-fourth) and may have additional requirements relating to residency, place of birth, or enrollment deadlines. The Federal Government generally requires a person to be a member of a federally recognized tribe to be eligible for federal benefits.

Q2. What is the definition of "Indian" for U.S. Census purposes?
A2. Racial classification for the 2000 census was based solely on self-identification and is quite broad concerning American Indians. The terms "American Indian" and "Alaska Native" refer to persons having origins in any of the indigenous peoples of North or South America who maintain a tribal affiliation or community attachment.

Q3. Do Indian individuals pay taxes?
A3. Indians are subject to the Internal Revenue Service (IRS) code and pay taxes on the same basis as any other citizen of the United States subject to minor differences. While gaming profits generated by the tribes are not taxed at the tribal level, any payments of those profits in the form of per capita payments to tribal members are considered taxable income under the IRS code.